

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JORDAN DAVID KNIPPLING,
Plaintiff,

vs.

SGT. MAGNUSON, BENTON COUNTY
JAIL and CITY OF KENNEWICK
Defendant.

NO. CV-08-402-CI

REPORT AND RECOMMENDATION TO
DISMISS COMPLAINT IN PART

Plaintiff, a prisoner at the Spokane County jail, brings this *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. By separate Order the court granted Plaintiff leave to proceed *in forma pauperis*. Plaintiff seeks monetary damages for alleged mental anguish and stress, as well as emotional distress, stemming from a false arrest and imprisonment. He also seeks injunctive relief against Defendant Magnuson, who allegedly made the false report that resulted in Plaintiff's arrest..

PRISON LITIGATION REFORM ACT

Under the Prison Litigation Reform Act of 1995, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or

1 portion thereof if the prisoner has raised claims that are legally
2 "frivolous or malicious," that fail to state a claim upon which relief
3 may be granted, or that seek monetary relief from a defendant who is
4 immune from such relief. 28 U.S.C. §§ 1915A(b)(1),(2) and 1915(e)(2);
5 *See Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

6 A claim is legally frivolous when it lacks an arguable basis
7 either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325
8 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984).
9 The court may, therefore, dismiss a claim as frivolous where it is
10 based on an indisputably meritless legal theory or where the factual
11 contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. The
12 critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. *See Jackson v.*
14 *Arizona*, 885 F.2d 639, 640 (9th Cir. 1989); *Franklin*, 745 F.2d at
15 1227.

16 A complaint, or portion thereof, will be dismissed for failure to
17 state a claim upon which relief may be granted if it appears the
18 "[f]actual allegations . . . [fail to] raise a right to relief above
19 the speculative level, on the assumption that all the allegations in
20 the complaint are true." *See Bell Atlantic, Corp. v. Twombly*, 540 U.S.
21 ___, 127 S.Ct. 1955, 1965 (2007)(citations omitted). In other words,
22 failure to present enough facts to state a claim to relief that is
23 plausible on the face of the complaint will subject that complaint to
24 dismissal. *Id.*, at 1974. The court must construe the pleading in the
25 light most favorable to Plaintiff, and resolve all doubts in
26 Plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

1 On the basis of these standards, some of Plaintiff's present
2 allegations appear to fail to state a claim upon which relief can be
3 granted.

4 SECTION 1983

5 Section 1983 requires a claimant to prove (1) a person acting
6 under color of state law (2) committed an act that deprived the
7 claimant of some right, privilege, or immunity protected by the
8 Constitution or laws of the United States. *Leer v. Murphy*, 844 F.2d
9 628, 632-33 (9th Cir. 1988). A person deprives another "of a
10 constitutional right, within the meaning of section 1983, if he does
11 an affirmative act, participates in another's affirmative acts, or
12 omits to perform an act which he is legally required to do that
13 "causes" the deprivation of which [the plaintiff complains]." *Redman*
14 *v. County of San Diego*, 942 F.2d 1435, 1439 (9th Cir. 1991)(brackets
15 in the original), *cert. denied*, 502 U.S. 1074 (1992); *Johnson v.*
16 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

17 A complaint must set forth the specific facts upon which the
18 plaintiff relies in claiming the liability of each defendant. *Ivey v.*
19 *Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Even a liberal
20 interpretation of a civil rights complaint may not supply essential
21 elements of a claim that the plaintiff failed to plead. *Id.* at 268.
22 To establish liability pursuant to § 1983, Plaintiff must set forth
23 facts demonstrating how each Defendant caused or personally
24 participated in causing a deprivation of Plaintiff's protected rights.
25 *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981); *Taylor v. List*,
26 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff must present a causal
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1 connection between named defendants and the conduct of which he
2 complains. See *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir.
3 1992).

4 Plaintiff has named the Benton County Jail and City of Kennewick
5 as Defendants to this action. He claims Defendant Magnuson "used"
6 them to effect his false arrest and imprisonment. These allegations
7 are insufficient to state a claim for relief against either entity.

8 A municipality or governmental entity cannot be found liable
9 under section 1983 on a *respondeat superior* theory; such liability can
10 be imposed only for injuries inflicted pursuant to an official
11 governmental policy or custom. *Gobel v. Maricopa County*, 867 F.2d
12 1201, 1206 (9th Cir. 1989), (citing *Monell v. New York City Dep't of*
13 *Social Services*, 436 U.S. 658, 690-94 (1978)). "[I]t is when execution
14 of a government's policy or custom, whether made by its lawmakers or
15 by those whose edicts or acts may fairly be said to represent official
16 policy, inflicts the injury that the government as an entity is
17 responsible under § 1983." *Monell*, 436 U.S. at 694. While a single
18 decision may satisfy the "policy" requirement, that decision must have
19 been properly made by one of the municipality's authorized
20 decisionmakers - by an official who "possesses final authority to
21 establish municipal policy with respect to the [challenged] action."
22 *Pembaur v. Cincinnati*, 457 U.S. 469, 479-81 (1986).

23 For Plaintiff to state a valid claim against Benton County Jail
24 or the City of Kennewick under section 1983, he must show either (1)
25 that the County Jail or City engaged in a pattern of failing to
26 properly train its employees and that the failure resulted in a
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1 violation of Plaintiff's constitutional rights, or (2) that a single
2 decision was made by an authorized policy maker, as defined by the
3 Supreme Court in *Pembaur*, and that the decision resulted in a
4 violation of Plaintiff's constitutional rights. See *Gobel*, 867 F.2d at
5 1206-1209. Plaintiff's complaint fails to adequately allege either
6 the Benton County Jail or the City of Kennewick engaged in a pattern
7 or practice that resulted in the deprivation of his constitutional
8 rights. Therefore, **IT IS RECOMMENDED** Plaintiff's claims against
9 Benton County Jail and City of Kennewick are **DISMISSED without**
10 **prejudice.**

11 **OBJECTIONS**

12 Any party may object to a magistrate judge's proposed findings,
13 recommendations or report within ten (10) days following service with
14 a copy thereof. Such party shall file written objections with the
15 Clerk of the Court and serve objections on all parties, specifically
16 identifying the portions to which objection is being made, and the
17 basis therefor. Any response to the objection shall be filed within
18 ten (10) days after receipt of the objection. Attention is directed
19 to FED. R. CIV. P. 6(d), which adds additional time after certain kinds
20 of service.

21 A district judge will make a de novo determination of those
22 portions to which objection is made and may accept, reject, or modify
23 the magistrate judge's determination. The judge need not conduct a
24 new hearing or hear arguments and may consider the magistrate judge's
25 record and make an independent determination thereon. The judge may,
26 but is not required to, accept or consider additional evidence, or may
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1 recommit the matter to the magistrate judge with instructions. *United*
2 *States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C.
3 § 636(b)(1)(B) and (C), FED. R. CIV. P. 72; LMR 4, Local Rules for the
4 Eastern District of Washington.

5 A magistrate judge's recommendation cannot be appealed to a court
6 of appeals; only the district judge's order or judgment can be
7 appealed. The court will reserve ruling that Plaintiff's remaining
8 claims be served until after the objection period has expired.

9 The District Court Executive is directed to enter this Report and
10 Recommendation and forward a copy to Plaintiff.

11 DATED January 29, 2009.

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13 S/ CYNTHIA IMBROGNO
14 UNITED STATES MAGISTRATE JUDGE
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